

REMARKS

Claims 1-43 are pending in the application and have been examined. Claims 1-43 have been rejected under 35 U.S.C. § 103(a) over Certified Marketing Services, Inc.. All of the claims have been amended hereby. In light of the above amendments and below remarks, reconsideration of the present application is respectfully requested.

In paragraph 2 of the Office Action, it is noted that the claims were mis-numbered, claim 19 appearing twice. Applicants gratefully thank the Examiner for re-numbering the claims to correct this error. As indicated above, Applicants have incorporated the renumbering into the complete set of claims provided herewith.

In paragraph 3 of the Office Action, claim 43 has been objected to because of a typographical error. This error has been corrected as indicated above and withdrawal of the objection thereof is respectfully requested.

In paragraph 4 of the Office Action, all of the claims of the present application have been rejected under § 103(a) over Certified Marketing Services, Inc. (CMS) Applicants respectfully traverse this rejection.

Independent claim 1, as amended, requires “**automatically** determining an amount of labor needed to perform said store activity.” Applicants respectfully submit that the CMS system does not “automatically” determine the amount of labor required as explicitly required by claim 1. Although, as pointed out in the Office Action, the CMS system does receive certain pieces of information electronically, nowhere does it disclose a system which has an automated the determination of the labor needed to perform the store activity. The only automated portion of the CMS system appears to be the ICAST Automated Project Tracking System described on page 4 of the reference. This portion of the CMS system enables a user “to uniformly coordinate and track national field services and field worker schedules.” These functions necessarily occur after CMS has made a determination as to the labor required to

perform store activity. This post labor determination step in no way teaches or suggests automating the step of determining the amount of labor required to perform the store activity. Electronic systems for performing such coordination and tracking are known in the art and readily admitted by the Applicants.

The ICAST portion of the CMS system as described at page four of the reference further states that it is an advanced assignment and tracking system. Again, the assignment and tracking functions can only be performed after the amount of labor has been determined. The automated assignment and tracking portion of the CMS system is further described at pages 9 and 10 of the reference. As can be readily seen, this portion of the system has no relevance to determining the labor required to perform a store activity.

Claim 1 has been further amended to recited that the automated labor determination is made “using said store information, said product information, said labor information and said labor requirements.” Although the CMS reference does broadly describe collecting certain types of information electronically, the types of information captured electronically by the CMS system cannot be used to determine the labor required as recited in independent claim 1. For example, with respect to the recited “product information” the Office Action (at page 3) states that the CMS system captures the type of store (e.g., drug store) and thereby teaches information related to the product. Clearly, the fact that a store is a drug store, for example, does not provide the kind of product detail required to “automatically determine[e] an amount of labor needed to perform said store activity” as required by claim 1.

To the best of Applicants’ knowledge, the manner in which the CMS system made the determination of the amount of labor needed to perform the store activity was still a manual process. Although CMS does collect some information electronically, there is no teaching or suggestion to utilize this electronically collected information in an automated fashion in order to make the determination of the amount of labor required to perform the store activity as expressly required by independent claim 1.

As there is no teaching or suggestion in the CMS reference for “automatically determining an amount of said labor needed to perform said store activity using said store information, said product information, said labor information and said labor requirements.”, withdrawal of the rejection of independent claim 1 on the basis of CMS is therefore respectfully requested.

As claims 2-18 depend from claim 1 and therefore contain all the limitations thereof, withdrawal of the rejection of these dependent claims for the reasons described above with respect to independent claim 1 is respectfully requested.

In paragraph 23 of the Office Action, independent claim 19 has been rejected under § 103 over the CMS reference. Applicants respectfully traverse this rejection. On page 15 of the Office Action, it is stated that CMS does not expressly disclose determining a fair share of a total amount of labor needed to perform said store activity. In order to cure this deficiency in the CMS reference, the Office Action states that “fair share is well known in labor industries” and that “[i]t would have been obvious to one of ordinary skill in the art at the time of the invention to determine hours required for each worker based on fair share requirements in order to increase the usefulness of the tool in the market by having the tool comply with labor standards.”

Applicants respectfully submit that the Examiner has misunderstood the concept of “fair share” as is known in the merchandising industry. Fair share is described in the present specification, for example, at page 3, second paragraph and at page 20, line 20-25. In most store re-models and re-sets, the affected area of the store typically involves the products of several manufacturers. The concept of “fair share” divides the total cost of the labor involved to complete the re-set among the various manufacturers whose products were involved in the re-set. This is often a difficult calculation as it cannot be simply done on a volume basis, as certain products require more labor to perform the re-set as others do. Similarly, it cannot be performed on a shelf space basis as certain products which require more shelf space can actually

be performed more quickly in comparison to a different product with less shelf space. Accordingly, the methods and systems of the present invention perform the “fair share” analysis on the basis of the system’s knowledge of the store, the product, the labor required for re-setting a particular product, and other factors as described throughout the specification and recited in the claims of the present application.

For the convenience of the Examiner, it should be further noted (as described in the present specification) manufacturers themselves typically do not provide the labor for performing the re-sets and hire third-party merchandisers (such as CMS) to perform this service for them. Accordingly, an accurate accounting of each manufacturer’s fair share of the labor’s cost is absolutely essential.

As admitted in the Office Action, CMS does not disclose, teach or suggest any way whatsoever in which the “fair share” can or should be determined. In fact, CMS does not discuss the concept of fair share at all. Applicants therefore respectfully submit that the discussion in the Office Action at page 16 regarding the compliance with labor standards is inapplicable to the present invention.

As CMS does not teach or suggest making a “fair share” determination, withdrawal of the rejection of independent claim 19 is therefore respectfully requested.

Claims 20-31 depend from independent claim 19 and therefore contain the “fair share” limitation thereof. Applicants respectfully request withdrawal of the rejection of dependent claims 20-31 on the basis of the arguments above with respect to independent claim 19.

In paragraph 26 of the Office Action, claim 32 has been rejected under § 103 over the CMS reference. Applicants respectfully traverse this rejection. The first software module of the system of independent claim 32 makes a determination of the “fair share of a total amount of labor needed to perform said store activity.” In the rejection of this first software

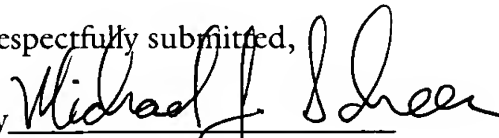
module of independent claim 32, the Office Action repeats the misconception that “fair share is well known in labor industries.” (page 17 of the Office Action) As described above, Applicants believe the Examiner has mistakenly interpreted the meaning of “fair share”. Applicants incorporate herein the arguments made above with respect to independent claim 19 with respect to the rejection of independent claim 32. As the CMS system does not describe a first software module that determines the “fair share of labor”, withdrawal of the rejection of independent claim 32 is therefore respectfully requested.

Dependent claims 33-43 each depend from independent claim 32 and therefore contain the “fair share” limitation thereof. Withdrawal of the rejection of dependent claims 33-43 on the basis of the above remarks is therefore respectfully requested.

Applicants have shown that the CMS system does not describe a system for automatically determining the labor required to perform a store activity. Applicants have furthermore shown that the CMS reference does not in any way disclose, teach or suggest the determination of a “fair share” of labor required to perform the store activity. As such, Applicants respectfully submit each of the claims of the present application are patentably distinguished from the CMS reference. As each of the claims of the present application are currently in condition for allowance, such action is earnestly solicited.

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Respectfully submitted,

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